

**(2010) 10 DEL CK 0156**

**In the Delhi High Court**

**Case No :** Regular Second Appeal No. 39 of 2002 and C.M. Appls. 634 of 2003, 12236 of 2004 and 5868 of 2007

Haryana State Co-Operative Supply and Marketing Federation  
Ltd. and Another

APPELLANT

Vs

B.S. Bedi and Another

RESPONDENT

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**Date of Decision :** 21-10-2010

**Acts Referred:**

**Citation :** (2010) 10 DEL CK 0156

**Hon'ble Judges :** Indermeet Kaur, J

**Bench :** Single Bench

**Advocate :** Ashok Bhasin, Sunklan and Shuchismita Ojha, for the Appellant;  
Rohit K. Aggarwal, for the Respondent

**Final Decision :** Disposed Off

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## **Judgement**

Indermeet Kaur, J.—This appeal is directed against the impugned judgment dated 28.11.2001 whereby the first appellate court had granted damages to the plaintiff B.S. Bedi of the suit property at the rate of Rs. 30/- per sq. ft. along with interest at the rate of 12% per annum. This impugned judgment had modified the finding of the trial judge dated 27.7.1999 who had awarded damages at the rate of Rs. 14/- per sq. ft. along with interest of 18% per annum.

2. It is not in dispute that the possession of the suit property having a covered area of 626 sq. ft. in flat No. 201, Bakshi House, 40-41, Nehru Place, Delhi has since been handed over to the plaintiff. Only dispute is with regard to the quantum of the mense profits which had been awarded to the respondent.

3. This is a second appeal. Appeal has been admitted on 28.7.2003. On 1.9.2010, the following substantial question of law had been formulated which inter alia reads as under:

Whether the findings in the impugned judgment dated 28.11.2001 are perverse qua the rate of damages/msne profits granted in favour of the respondent?

4. PW-1 had proved the registered lease deed dated 25.2.1993 Ex.PW1/1. As per this document the rate of rent in the vicinity of similar properties was Rs. 45/- per sq. ft.. PW-5 was an attesting witness to this document. PW-3 had entered the witness box to prove another lease deed which was of the year 1996 Ex.PW3/1 where the rate of rent in the vicinity was of Rs. 50/- per sq. ft. PW-4 was an attesting witness to this document. PW-6 was a retired executive engineer of the CPWD. He had deposed that in the year 1993 rate of rent of similar properties was Rs. 30 to 35/- per month. On the date of deposition of this witness which was in the year 1999 the rate of rent would be Rs. 70/- per sq. ft. It was this oral and documentary evidence which had led the two courts below to hold that the plaintiff is entitled to mesne profit at the rate of Rs. 14/- sq.ft. Appellate court had however re-appreciated this evidence and enhanced the mesne profit from Rs. 14 to Rs. 30/- per sq.ft. Rate of interest which had awarded by the trial court at the rate of 18% was however reduced to 12% per annum.

5. It has been pointed out by the learned Counsel for the appellant that the lease initially started at the rate of Rs. 3.10 per sq. ft.; it was enhanced to Rs. 4.25/- and then to Rs. 5.37 and lastly to Rs. 6.17/-. The contention of the learned Counsel for the appellant that this was an arbitrary exercise of power by the first appellate court and the mesne profit awarded at such an exorbitant amount of Rs. 30/- is not in consonance with the evidence led before this Court is a misunderstood argument. Admittedly, the lease at the rate of Rs. 3.10 per sq. ft. had commenced in the year 1977. Both the oral and documentary evidence clearly evidence that the properties in the neighbourhood in the year 1993 were fetching rent of more than Rs. 30/- per sq.ft.; another property was also fetching rent at the rate of Rs. 50/- per sq.ft. Testimony of these witnesses could not be tarnished. Defendant has not led any evidence on this score. At this stage, counsel for the appellant states that a property in the neighbouring vicinity which had been taken on lease by the appellant in the year 1993 was taken on lease at the rate of Rs. 18/- per sq. ft.; admittedly, this lease deed had not seen the light of the day before both the courts below. Such a document cannot be looked into at the second appellate stage.

6. The second appellate court is not a third fact finding court. It is only on a substantial question of law that this Court can interfere. Otherwise, the hands of this Court are tied. The evidence on record both oral and documentary has duly supported the stand taken in the impugned judgment which calls for no interference. It, in no manner, can be said to be a perverse finding. The finding is based on cogent, oral and documentary evidence led before it. The appeal has no merit. It is dismissed.

7. At this stage, learned Counsel for the parties have pointed out that the decretal amount has since been deposited with the Registrar General of this Court which is lying in an FDR. On 8.3.2007, 15% of the amount had been permitted to be withdrawn. Since the appeal stands dismissed, the amount lying

deposited in the FDR be released to the respondent forthwith. It is pointed out by learned Counsel for the parties that only the principal amount had been deposited; respondent states that he is not pressing his claim to any additional amount by way of interest at the rate of 12% per annum in terms of the impugned judgment.

8. With these directions, the appeal as also the pending applications is disposed of.